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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/874,031	06/06/2001	Linda Roskin	Roskin-1	7600

7590 12/06/2004

Eric A. LaMorte  
985 Reading Avenue  
P.O. Box 434  
Yardley, PA 19067-1626

EXAMINER

VALENTI, ANDREA M

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 12/06/2004

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/874,031  
Filing Date: June 06, 2001  
Appellant(s): ROSKIN, LINDA

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Eric A. LaMorte  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 28 October 2004.

**(1) *Real Party in Interest***

A statement identifying the real party in interest is contained in the brief. The real party of interest is Linda Roskins.

**(2) *Related Appeals and Interferences***

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. Applicant noted Appeal No. 2003-1855.

**(3) *Status of Claims***

The statement of the status of the claims contained in the brief is correct.

**(4) *Status of Amendments After Final***

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) *Summary of Invention***

The summary of invention contained in the brief is correct.

**(6) *Issues***

The appellant's statement of the issues in the brief is substantially correct. The changes are as follows:

Issue 2 should read --unpatentable over European Patent Reference No. 0182453 to Turner in view of U.S. Patent No. 4,901,881 to McElroy and further in view of U.S. Patent No. 2,876,587 to Saks--

Issue 3 mentions claims 5-22, but this should be --claims 5 and 7-22--

**(7) Grouping of Claims**

Appellant's brief includes a statement that claims 11-18; 19-21; and 22, 5, 7-10 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

**(8) Claims Appealed**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(9) Prior Art of Record**

EP 0182453	Turner	07-1985
4,901,881	McElroy	02-1990
2,876,587	Saks et al	03-1959

**(10) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 5 and 7-22 are rejected under 35 U.S.C. 103(a). This rejection is set forth in a prior Office Action, mailed on 26 May 2004.

Claims 5-7, 9-15, and 17-22 are rejected under 35 U.S.C. 103 (a) as being unpatentable over European Patent EP 0182453 to Turner in view of U.S. Patent No. 4,901,881 to McElroy.

Claims 8 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over European Patent EP 0182453 to Turner in view of U.S. Patent No. 4,901,881 to McElroy as applied to claims 22 and 11, and further in view of U.S. Patent No. 2,876,587 to Saks et al.

**(11) Response to Argument**

Turner teaches a container/vase with a cover consisting of a grid pattern placed over the open top end of the container/vase. The container/vase is designed to received the stems of plants and flowers, i.e. Turner teaches a method of inserting the plant/flower stems through the grid apertures. Turner does not explicitly teach an elastomeric feature; instead, Turner teaches a cover attached to the container/vase via a frictional snap fit. However, Turner does teach that any other suitable means may be employed for securing the cover to the top of the container (Turner page 4 line 23-31). Thus enters the teachings of McElroy. McElroy teaches a similar container/vase configuration that has a cover containing apertures. The cover of McElroy is placed over the open top end of the container/vase. However, McElroy explicitly teaches that the cover has an elastomeric feature (McElroy Col. 2line 14-21, Col.1 line 11, and Col. 8 line 40) that enables it to go from a size that is smaller than the maximum width of the open top container when it is unstretched to a stretched width that is greater than the

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maximum width of the container open top end (McElroy Fig. 7 and 8). Thus McElroy is merely teaching "any other suitable means" for securing the cover to the top of the container as expressed by Turner. The cover of McElroy is merely an alternate equivalent cover selection for one of ordinary skill in the art.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). McElroy presents the knowledge, which was within the level of ordinary skill at the time the claimed invention was made. McElroy teaches that it is known to place elastomeric covers that have apertures (McElroy #20) on to open top containers (McElroy #30). One of ordinary skill in the art would be motivated or has reason to combine/modify the teachings of Turner with the teachings of McElroy for the known advantage of being able to use one container cover on a variety of container sizes. Also, McElroy presents an alternate cover with additional ergonomic features, thus making it a desirable selection over other covers known in the art. Examiner maintains that one of ordinary skill in the art would have sufficient motivation/suggestion/success to select the alternate cover of McElroy to modify the teachings of Turner.

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Furthermore, the examiner maintains that the modification of the cover of Turner in view of Saks' translucent cover is an obvious aesthetic design choice that merely involves the selection of a neutral appearance to blend with its surroundings and does not present a patentably distinct limitation.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Andrea M. Valenti  
Patent Examiner  
Art Unit 3643



**PETER M. POON**  
**SUPERVISORY PATENT EXAMINER**

November 30, 2004

Conferees

Peter Poon 

Jeff Gellner 

Andrea Valenti 

Eric A. LaMorte  
985 Reading Avenue  
P.O. Box 434  
Yardley, PA 19067-1626